

HOUSE No. 996

The Commonwealth of Massachusetts

PRESENTED BY:

James M. Murphy

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act making technical corrections in the law relative to discharge of certain mortgages.

PETITION OF:

NAME:

James M. Murphy

DISTRICT/ADDRESS:

4th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1040 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT MAKING TECHNICAL CORRECTIONS IN THE LAW RELATIVE TO DISCHARGE OF CERTAIN MORTGAGES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 54 of chapter 183 of the General Laws, as appearing in section 1 of chapter 63 of
2 the acts of 2006, is hereby amended by striking out the definition of “mortgagee” and inserting in place
3 thereof the following clause: -

4 “Mortgagee”, the holder of record of a mortgage, or any successor in interest to the record holder,
5 including as identified pursuant to subsection (i) of section 55 or by reference to other documents of
6 record or to a database maintained by a governmental or quasi-governmental agency or entity; but, if the
7 mortgage was properly assigned of record, mortgagee shall mean the last person to whom the mortgage
8 was so assigned, or any such successor in interest thereto as so identified.

9 SECTION 2. Said Chapter 183 is hereby further amended by striking out Section 54B, as appearing in
10 section 2 of said chapter 63, and inserting in place thereof the following section:

11 Section 54B. Notwithstanding any provision of law to the contrary, (a) a discharge of mortgage; (b) a
12 release, partial release or assignment of mortgage; (c) an instrument of subordination, non-disturbance,
13 recognition, or attornment by the holder of a mortgage; (d) any instrument for the purpose of foreclosing a

mortgage and conveying the title resulting therefrom, including but not limited to notices, deeds, affidavits, certificates, votes, assignments of bids, confirmatory instruments and agreements of sale; or (e) a power of attorney given for that purpose or for the purpose of servicing a mortgage, and in either case, any instrument executed by the attorney-in-fact pursuant to such power, if executed before a notary public, justice of the peace or other officer entitled by law to acknowledge instruments, whether executed within or without the commonwealth, by a person purporting to hold the position of president, vice president, treasurer, clerk, secretary, cashier, loan representative, principal, investment, mortgage or other officer, agent, asset manager, or other similar office or position, including assistant to any such office or position, of the entity holding such mortgage, or otherwise purporting to be an authorized signatory for such entity, or acting under such power of attorney on behalf of such entity, acting in its own capacity or as a general partner or co-venturer of the entity holding such mortgage, shall be binding upon such entity and shall be entitled to be recorded, and no vote of the entity affirming such authority shall be required to permit recording.

SECTION 3. Section 54C of said chapter 183, as appearing in section 3 of said chapter 63, is hereby amended by striking out, in line 57, the words “and cannot be located.”

SECTION 4. Section 55 of said chapter 183, as appearing in section 4 of said chapter 63, is hereby amended by striking out, in line 25, the word “MORTGAGEE” and inserting in place thereof the word “MORTGAGE” and by striking out, in line 47, the word “shall” and inserting in place thereof the word “to.”

SECTION 5. Subsection (g) of said section 55, as so appearing, is hereby amended by striking out paragraph (7) and inserting in place thereof the following paragraph (7):

(7) The affidavit shall also include the names and last known addresses of the mortgagor and the record mortgagee, mortgage servicer or note holder, the date of the mortgage and the mortgage recording reference, as well as that of any recorded assignment of the mortgage. Further, if the mortgagee to whom notice is required to be sent pursuant to paragraphs (1) through (3) of this subsection is a successor as defined in section 54, the affidavit shall also name the original mortgagee, if no longer the record mortgagee, as well as such successor mortgagee, and include the last known address for such successor

mortgagee and a brief description of how the successor mortgagee's identity and last known address were determined, such as by reference to other documents of record, including a recorded document containing the recitals set forth in subsection (i) or by reference to a database maintained by a governmental or quasi-governmental agency or entity. Failure of the affiant to include such information in an affidavit, or to certify a copy of any notice required to be attached thereto as a true copy, shall not affect the validity of the affidavit or its effect as a discharge.

SECTION 6. Section 15 of chapter 240 of the General Laws, as appearing in section 5 of said chapter 63, is hereby amended by striking out subsection (b) and inserting in place thereof the following subsection:

(b) If the record title of land or of easements or rights in land is encumbered by an undischarged mortgage or a mortgage not properly or legally discharged of record, and the mortgagor or the mortgagor's heirs, successors or assigns do not have actual or direct evidence of full payment or satisfaction of the mortgage but the mortgagor, or the mortgagor's heirs, successors or assigns have been in uninterrupted possession of the land or exercising the rights in easements or other rights in the land, either: (1) in the case of a successor or assign who is a bona fide purchaser for value or who is an heir, successor or assign of the bona fide purchaser for value, for any period of one year after the expiration of the time limited in the mortgage for the full performance of the condition thereof, or for any period of 20 years after the recording of a deed from the mortgagor or his heirs or devisees to the bona fide purchaser, which deed did not evidence that title was taken subject to the mortgage or that the purchaser assumed or agreed to pay the mortgage; or (2) in the case of the mortgagor, or the mortgagor's heirs, devisees or successors by operation of law, for any period of one year after the expiration of the time limited in the mortgage for the full performance of the condition thereof, or for any period of 20 years after the date of a mortgage not given to secure the payment of money or a debt but to secure the mortgagee against a contingent liability which has so ceased to exist that no person will be prejudiced by the discharge thereof, the mortgagor, or the mortgagor's heirs, successors or assigns, or any person exercising the rights in easements or any person named in section 11, may file a petition in the land court or, except in the case

of registered land, in the superior court for the county in which the land is located; and if, after such notice by publication or otherwise as the court orders, no evidence is offered of a payment on account of the debt secured by the mortgage within the relevant period of uninterrupted possession or of any other act within the time in recognition of its existence as a valid mortgage, or if the court finds that the contingent liability has ceased to exist and that the mortgage ought to be discharged, it may enter a decree discharging the mortgage, which decree, when duly recorded in the registry of deeds for the county or district where the land lies or, in the case of registered land, when duly noted on the memorandum of encumbrances of the relevant certificate of title, shall operate as a discharge of said mortgage and no action to enforce a title under the mortgage shall thereafter be maintained. Two or more persons owning in severalty different portions or different interests, such as are described in section 11, in the land subject to the mortgage may join in 1 petition, and 2 or more defects arising under different mortgages affecting 1 parcel of land may be set forth in the same petition. If the petition is contested, the court shall make an appropriate order for separate issues.

SECTION 7. This act shall apply to mortgages and other documents or instruments referred to herein, whether recorded before, on or after the effective date hereof.